

104TH CONGRESS
1ST SESSION

H. R. 1285

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide a specific definition of the requirement that a purchaser of real property make all appropriate inquiry into the previous ownership and uses of the real property in order to qualify for the “innocent landowner” defense.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1995

Mr. WELDON of Pennsylvania (for himself and Mr. UPTON) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide a specific definition of the requirement that a purchaser of real property make all appropriate inquiry into the previous ownership and uses of the real property in order to qualify for the “innocent landowner” defense.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Innocent Landowner
3 Defense Amendment of 1995”.

4 **SEC. 2. AMENDMENT TO SUPERFUND PERTAINING TO IN-**
5 **NOCENT LANDOWNER DEFENSE.**

6 Section 101(35) of the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980 (42
8 U.S.C. 9601 et seq.) is amended by redesignating sub-
9 paragraphs (C) and (D) as subparagraphs (D) and (E),
10 respectively, and inserting after subparagraph (B) the fol-
11 lowing:

12 “(C)(i) A defendant who has acquired real property
13 shall have established a rebuttable presumption that he
14 has made all appropriate inquiry within the meaning of
15 subparagraph (B) if he establishes that, immediately prior
16 to or at the time of acquisition, he obtained a Phase I
17 Environmental Audit of the real property which meets the
18 requirements of this subparagraph.

19 “(ii) For purposes of this subparagraph, the term
20 ‘environmental professional’ means an individual, or an
21 entity managed or controlled by such individual who,
22 through academic training, occupational experience and
23 reputation (such as engineers, environmental consultants
24 and attorneys), can objectively conduct one or more as-
25 pects of a Phase I Environmental Audit. For purposes of
26 this subparagraph, the term ‘Phase I Environmental

1 Audit' means an investigation of the real property, con-
2 ducted by environmental professionals, to determine or
3 discover the obviousness of the presence or likely presence
4 of a release or threatened release of hazardous substances
5 on the real property and which consists of a review of each
6 of the following sources of information concerning the pre-
7 vious ownership and uses of the real property:

8 “(I) Recorded chain of title documents regard-
9 ing the real property, including all deeds, easements,
10 leases, restrictions, and covenants for a period of 50
11 years.

12 “(II) Aerial photographs which may reflect
13 prior uses of the real property and which are reason-
14 ably obtainable through State or local government
15 agencies.

16 “(III) Determination of the existence of re-
17 corded environmental cleanup liens against the real
18 property which have arisen pursuant to Federal,
19 State, and local statutes.

20 “(IV) Reasonably obtainable Federal, State,
21 and local government records of sites or facilities
22 where there has been a release of hazardous sub-
23 stances and which are likely to cause or contribute
24 to a release or threatened release of hazardous sub-
25 stances on the real property, including investigation

1 reports for such sites or facilities; reasonably obtain-
2 able Federal, State, and local government environ-
3 mental records of activities likely to cause or con-
4 tribute to a release or a threatened release of haz-
5 ardous substances on the real property, including
6 landfill and other disposal location records, under-
7 ground storage tank records, hazardous waste han-
8 dler and generator records and spill reporting
9 records; and such other reasonably obtainable Fed-
10 eral, State, and local government environmental
11 records which report incidents or activities which are
12 likely to cause or contribute to a release or threat-
13 ened release of hazardous substances on the real
14 property. A record is considered to be reasonably ob-
15 tainable for purposes of this subclause if a copy or
16 reasonable facsimile of the record is obtainable from
17 the government agency by request.

18 “(V) A visual site inspection of the real prop-
19 erty and all facilities and improvements on the real
20 property, and a visual inspection of immediately ad-
21 jacent properties from the real property, including
22 an investigation of any chemical use, storage, treat-
23 ment and disposal practices on the property.

24 “(iii) No presumption shall arise under clause (i) un-
25 less the defendant has maintained a compilation of the in-

1 formation reviewed in the course of the Phase I Environ-
2 mental Audit.

3 “(iv) Notwithstanding any other provision of this
4 paragraph, if the Phase I Environmental Audit discloses
5 the presence or likely presence of a release or threatened
6 release of hazardous substances on the real property to
7 be acquired, no presumption shall arise under clause (i)
8 with respect to such release or threatened release unless
9 the defendant has taken reasonable steps, in accordance
10 with current technology available, existing regulations,
11 and generally acceptable engineering practices, as may be
12 necessary to confirm the absence of such release or threat-
13 ened release.”.

14 **SEC. 3. EFFECTIVE DATE.**

15 Subparagraph (C) of section 101(35) of the Com-
16 prehensive Environmental Response, Compensation, and
17 Liability Act of 1980, as added by section 2, shall take
18 effect on the date of the enactment of this Act.

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